

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6390

BILL NUMBER: SB 89

NOTE PREPARED: Jan 23, 2008

BILL AMENDED: Jan 22, 2008

SUBJECT: Regulation of Loan Brokers.

FIRST AUTHOR: Sen. Lawson C

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *FBI Background Checks*- The bill specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers may include a national criminal history background check by the Federal Bureau of Investigation (FBI). The bill specifies that the Securities Commissioner shall require each: (1) equitable owner of a loan brokerage business; and (2) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. The bill prohibits the Commissioner from releasing the results of a national criminal history background check to a private entity.

Multistate Automated Licensing System- The bill allows the Commissioner to designate a multistate automated licensing system and repository (system) as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers. The bill allows the Commissioner to check the qualifications and background of each: (1) equitable owner of a loan brokerage business; and (2) applicant for registration as an originator or a principal manager; by accessing the system.

Breach of Security of Records- The bill specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower.

Disposal of Personal Information- The bill prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable.

Miscellaneous Prohibitions- The bill prohibits a person from doing any of the following in connection with a contract for the services of a loan broker: (1) Receiving funds that the person knows were generated as a result of a fraudulent act. (2) Filing or causing to be filed with a county recorder any document that contains a misstatement or untrue statement or that omits a material fact. (3) Knowingly releasing or disclosing, or engaging in any reckless or negligent activity allowing the release or disclosure of, the personal information of a borrower or prospective borrower unless the borrower has authorized the disclosure of the information for certain purposes authorized by a borrower.

Technical Changes- The bill makes technical changes.

(The introduced version of this bill was prepared by the Interim Study Committee on Mortgage Practices and Home Loan Foreclosures.)

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Summary-* The Office of Secretary of State (SOS) reports that the requirements of the bill would be met within the SOS's existing level of resources.

Additional national criminal background checks could require an increase in administrative time for the Indiana State Police Department (SPD) to complete. The impact to SPD time and expenditures would depend on the number of additional background checks ordered by the Securities Commissioner.

The impact of the Multistate Automated Licensing System on SOS expenditures will depend on the system used and the number of persons entered. The Securities Commissioner could place a reasonable processing fee on persons entered into the system. Access to a system maintained by a third party could reduce the amount of administrative time needed for the Securities Commissioner to investigate registrants. The Securities Commissioner would not be able to require a person exempt from broker licensure or registration to submit information or participate in the system.

Penalty Provisions- A violation of a loan broker statute currently constitutes a Class D felony. Under current law, a violation is a Class C felony for knowingly sending false documents or making false statements to the Securities Commissioner during an examination or investigation. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.)

If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,138. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Background Information- At the end of FY 2007, the SOS reverted \$42,178 to the state General Fund. The SOS was appropriated \$3.5 M in FY 2008 from state General and dedicated funds. SOS administration accounts for \$2.5 M of the appropriation. The Securities Division Enforcement Fund was appropriated \$0.9 M for FY 2008.

FY 2008, the SPD state General Fund appropriation is \$56.4 M. The SPD reverted \$184,991 to the state

General Fund. About \$18,000 of the reversion was from the State Police Matching Fund.

There are currently 1,271 Indiana licensed mortgage brokers. There are 1,091 brokers operating in Indiana without a license due to a statutory exemption.

Explanation of State Revenues: *Penalty Provision-* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Penalty Provision-* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Penalty Provision-* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Secretary of State, Indiana State Police Department, Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Department of Correction; *State of Indiana List of Appropriations, July 1, 2007, to June 30, 2009*, State Budget Agency; Matt Teusing, Jeff Bush, Office of the Secretary of State; *Report Pursuant to HEA 1717 on the Feasibility of the Regulation of Mortgage Brokers by the Indiana Department of Financial Institutions, November 1, 2007*.

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